

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**YANG CHEN**  
**Plaintiff,**

**v.**

**UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES  
A/K/A/ USCIS**  
**Defendant**

Case No: 19 CV 1832

Honorable \_\_\_\_\_

**COMPLAINT FOR MANDAMUS**

Now comes the Plaintiff, YANG CHEN, by and through his attorney Alexander Michael hereby brings his complaint for mandamus relief against USCIS. In support of this petition, plaintiff hereby states as follows:

**PARTIES**

1. Plaintiff, YANG CHEN, is a resident of the state of Illinois and a Legal Permanent Resident (Green-card holder) of the United States of America since April 26, 2010.
2. Defendant, UNITED STATES CITIZENSHIP and IMMIGRATION SERVICES or “USCIS”, is a United States agency, charged with determining eligibility of immigration benefits, approving, denying, and otherwise adjudicating all immigration related applications.

**FACTUAL BACKGROUND**

3. Plaintiff's A number or Alien number (a USCIS identifier for all immigration applicants) is A087-554-065.
4. Plaintiff received his legal permanent residency on April 26, 2010 from USCIS.
5. Plaintiff then filed his application (Form N-400) to become a United States citizen on or about April 3, 2015 with USCIS.
6. Legal permanent residents of the United States are eligible to file for citizenship 4 years and 9 months after receiving their permanent residency.
7. Plaintiff's application was filed in accordance with the requisite waiting period and he is eligible to receive his citizenship from USCIS.
8. The Plaintiff was interviewed by USCIS regarding his citizenship application on March 20, 2017, nearly two years after his application was filed.
9. Plaintiff was advised that USCIS could not issue a decision about his decision on such date.
10. USCIS tendered a document to Plaintiff at his interview that is routinely given in the ordinary course of business to all individuals who complete a citizenship interview, a form N-652 Naturalization Interview Results. This form is dated the date of the interview, March 20, 2017 and is attached as **Exhibit A**.
11. The form indicates that the Plaintiff passed the exams required for becoming a citizen, but that for unspecified reasons a decision could not be made about his application. He

was advised by the interviewing USCIS officer that a decision would be forthcoming in the mail at a later date.

12. As of March 13, 2019 (nearly 4 years since the date of filing) no decision has been issued with respect to Plaintiff's citizenship application.
13. Plaintiff has made numerous in person and written inquiries as to when he can expect a decision. Such inquiries include, but are not limited to:
  - a. August 21, 2017
  - b. July 31, 2018
  - c. November 20, 2018
14. Documentation of such inquiries is attached as **Exhibit B**.
15. Despite such inquiries, no substantive response has been received from USCIS.
16. The Instant Action for Mandamus arises from the fact that the Plaintiff believes that the delay is occasioned by USCIS and that such delay stems from a failure to act or exercise their duty in these matters.
17. A 4 year delay in adjudicating such an application is unreasonable. The Plaintiffs seek an order to compel USCIS to act on this application.

### **JURISDICTION AND VENUE**

18. This is a civil action brought pursuant to 28 U.S.C. §1361 which states "The District Courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiff."
19. The Plaintiff resides in the Northern District of Illinois.

20. The applications are pending with the Chicago USCIS office. The Chicago Citizenship Office is located in Chicago, IL and within the Northern District of Illinois.
21. Jurisdiction is further conferred under the federal question provision of 28 U.S.C. §1331, which states that “the District Courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”
22. Jurisdiction is also conferred pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. §555 (b) and 702. According to the APA, USCIS is required to carry out its duties within a reasonable time. 5 U.S.C. §555 (b) provides in part that “with due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.”
23. USCIS is subject to 5 U.S.C. §555 (b). See *Trudeau v. FTC*, 456 F.3d 178, 185 (D.C. Cir. 2006) (where the court held that the district courts have jurisdiction under the APA, in conjunction with 28 U.S.C. §1331. Furthermore, 5 U.S.C. §706(1) grants the power for the reviewing court to “compel agency action unlawfully withheld or unreasonably delayed”. (Emphasis added).

#### **COUNT I: WRIT OF MANDAMUS**

24. Plaintiff hereby restate and replead Paragraphs 1-23 as though they were fully set forth herein in this paragraph.
25. That Plaintiff properly filed his application for citizenship in the United States and is fully eligible to receive such benefit.
26. The Plaintiff, as of March 13, 2019 has been waiting approximately four years since filing the application for citizenship for a decision.

27. That to date no response to the application has been issued. The Plaintiff demands and is entitled to adjudication of the application.
28. 28 U.S.C. §1361 states “The District Courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiff.”
29. According to the APA, USCIS is required to carry out its duties within a reasonable time. 5 U.S.C. §555 (b) provides in part that “with due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.”
30. That USCIS has not acted in a reasonably timely manner.
31. The Plaintiff has had to deal with the unknown future for four years to this point, and possibly several more years if USCIS is not compelled to act on this application.
32. That the Defendant’s delay has caused Plaintiff an unreasonable amount of stress, delay, expenses from this uncertain future.
33. That reasonable attempts at inquiries have yielded no progress in getting a decision issued.
34. A Plaintiff filing a mandamus complaint must demonstrate that: (1) he has a clear right to the relief sought; (2) the defendant has a clear duty to perform; (3) no other adequate remedy is available. *Blaney v. U.S.*, 34 F. 3d 507, 513 (7th Cir. 1994); *Iddir v. INS*, 301 F. 3d 492, 499 (7th Cir. 2002).
35. The Plaintiff meets all of the three requirements.
36. The Plaintiff is entitled to apply for citizenship and obtain a fair and timely decision on his case.

37. The Defendant, USCIS, is the only agency who has the requisite authority to adjudicate such applications for citizenship.

38. Finally, other than a decision by USCIS, there is no other way possible to resolve their immigration status in the United States since USCIS is the only agency with authority to act on behalf of the United States and make determinations regarding citizenship.

39. Defendant's delay is without justification. No explanation has been given for the nature of the delay.

WHEREFORE, the PLAINTIFF, by and through their attorney, prays for the following relief:

A. Compel the Defendants and those acting under them to take all appropriate action to adjudicate the Plaintiff's application without further delay;

B. Grant attorney's fees and costs of court to the Plaintiff under the Equal Access to Justice Act ("EAJA");

C. Grant such other and further relief as this Court deems proper.

Respectfully Submitted

*Alexander Michael*

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Alexander Michael  
Ettinger and Besbekos  
12413 S. Harlem  
Suite 203  
Palos Heights, IL 60463  
708-923-0368

# Exhibit A



**Naturalization Interview Results**  
**Department of Homeland Security**  
**U.S. Citizenship and Immigration Services**

**USCIS**  
**Form N-652**

A-Number: A087554065

On 3/20/2017, you were interviewed by USCIS officer \_\_\_\_\_ ABID \_\_\_\_\_

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and you are exempt from the English language requirement.
- ☐ USCIS granted your request for a Disability Exception. The requirement to demonstrate English language ability and/or knowledge of U.S. history and government is waived.
- ☐ You will have another opportunity to be tested on your ability to ☐ speak/ ☐ read/ ☐ write/ ☐ understand English.
- ☐ You will have another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your ☐ English ability/ ☐ knowledge of U.S. history and government. USCIS will not reschedule you for another interview for this Form N-400. USCIS will send you a written decision about your application.
- A) ☐ **Congratulations! Your application is recommended for approval.** At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.
- B) ☒ **A decision cannot yet be made about your application.**

**It is very important that you:**

1. Notify USCIS if you change your address.
2. Attend any scheduled interview
3. Submit all requested documents.
4. Send any questions about your application in writing to the officer named above. Include your full legal name, Alien Registration Number (A-Number), and a copy of your Form N-652.
5. Attend your scheduled Oath Ceremony. Dress in proper attire to respect the dignity of this event (for example, do not wear jeans, shorts or flip flops).
6. Notify USCIS as soon as possible in writing if you cannot attend your scheduled interview or Oath Ceremony. Include a copy of the scheduling notice.

**NOTE:** Be advised that under section 336 of the Immigration and Nationality Act (INA), you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS has not made a determination on your application within 120 days of the date of your examination.



# Exhibit B

U.S. Department of Homeland Security  
USCIS  
101 West Congress Parkway  
Chicago, IL 60605



## U.S. Citizenship and Immigration Services

Tuesday, August 22, 2017

YANG CHEN  
546 EICHLER DRIVE  
APT 2N  
WEST DUNDEE IL 60118

Dear Yang Chen:

On 08/21/2017 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

<b>Person who contacted us:</b>	Yu, Scott
<b>Caller indicated they are:</b>	Attorney or Authorized Representative
<b>Attorney Name:</b>	YU, SCOTT
<b>Case type:</b>	N400
<b>Filing date:</b>	04/03/2015
<b>Receipt #:</b>	NBC*005773289
<b>Referral ID:</b>	SR12331701215CHI
<b>Beneficiary (if you filed for someone else):</b>	Information not available
<b>Your USCIS Account Number (A-number):</b>	A087554065
<b>Type of service requested:</b>	Outside Normal Processing Times

The status of this service request is:

On August 21, 2017, your representative contacted USCIS concerning your Application for Naturalization (Form N-400) to notify us that you believe your case is outside of our normal processing time. Below is a summary of what we found and how the issue has been or may be resolved.

We received your request and have forwarded your request to the appropriate section for further review. Your application is still pending consideration. We regret that we are not able to give you a timeframe for when we will complete the review of your application.

### What You Can Do

Please see the "Online Services" below to check the status of your case in the near future. We apologize for the delay.

We hope this information is helpful to you.

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### Online Services

We offer many online services and tools to help you find the information you need. Please visit our Web site at [www.uscis.gov](http://www.uscis.gov) for information about:

- Using our Case Status Online tool;

U.S. Department of Homeland Security  
USCIS  
101 West Congress Parkway  
Chicago, IL 60605



## U.S. Citizenship and Immigration Services

Friday, August 24, 2018

YANG CHEN  
546 EICHLER DRIVE  
APT 2N  
WEST DUNDEE IL 60118

Dear Yang Chen:

On 07/31/2018, you or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

<b>Person who contacted us:</b>	Yu, Scott
<b>Caller indicated they are:</b>	Attorney or Authorized Representative
<b>Attorney Name:</b>	YU, SCOTT
<b>Case type:</b>	N400
<b>Filing date:</b>	04/03/2015
<b>Receipt #:</b>	NBC*005773289
<b>Referral ID:</b>	SR12121801531CHI
<b>Beneficiary (If you filed for someone else):</b>	Information not available
<b>Your USCIS Account Number (A-number):</b>	A087554065
<b>Type of service requested:</b>	Outside Normal Processing Times

The status of this service request is:

On August 31, 2017, you or your representative contacted USCIS concerning your Application for Naturalization; N-400 to notify us that you believe your case is outside of our normal processing time. Below is a summary of what we found and how the issue has been or may be resolved.

Your Application for Naturalization; N-400 is pending Officer Review. We regret that we are not able to give you a timeframe for when we will complete the review of your petition/application. We will forward this inquiry to the Officer for consideration.

### What You Can Do

Please see the "Online Services" below to check the status of your case in the near future. We apologize for the delay. If you moved, go to [www.uscis.gov/addresschange](http://www.uscis.gov/addresschange) to give us your new mailing address.

We hope this information is helpful to you.

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### Online Services

We offer many online services and tools to help you find the information you need. Please visit our Web site at [www.uscis.gov](http://www.uscis.gov) for information about:

- \* Using our Case Status Online tool;

U.S. Department of Homeland Security  
USCIS  
101 West Congress Parkway  
Chicago, IL 60605



## U.S. Citizenship and Immigration Services

Tuesday, December 11, 2018

YANG CHEN  
546 EICHLER DRIVE  
APT 2N  
WEST DUNDEE IL 60118

Dear Yang Chen:

On 11/20/2018, you or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

<b>Person who contacted us:</b>	Yu, Scott
<b>Caller indicated they are:</b>	Attorney or Authorized Representative
<b>Attorney Name:</b>	YU, SCOTT
<b>Case type:</b>	N400
<b>Filing date:</b>	04/03/2015
<b>Receipt #:</b>	NBC*005773289
<b>Referral ID:</b>	SR13241801950CHI
<b>Beneficiary (If you filed for someone else):</b>	Information not available
<b>Your USCIS Account Number (A-number):</b>	A087554065
<b>Type of service requested:</b>	Outside Normal Processing Times

The status of this service request is:

On November 20, 2018, you or your representative contacted U.S. Citizenship and Immigration Services (USCIS) about your Application for Naturalization; N-400 because you believe your case is outside normal processing times.

We are still reviewing your case. We will mail you a notice when we make a decision.

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We offer many online services and tools to help you find the information you need at [www.uscis.gov/tools](http://www.uscis.gov/tools) and [my.uscis.gov](http://my.uscis.gov), including:

Case Status: Sign up for detailed case updates in myUSCIS: [my.uscis.gov/account](http://my.uscis.gov/account)

Check your current case status: [www.uscis.gov/casestatus](http://www.uscis.gov/casestatus)

Check processing times: [www.uscis.gov/processingtimes](http://www.uscis.gov/processingtimes)

Ask about your case: [www.uscis.gov/e-request](http://www.uscis.gov/e-request)

Schedule an appointment: [my.uscis.gov/appointment](http://my.uscis.gov/appointment)

Ask our virtual assistant Emma: [www.uscis.gov/emma](http://www.uscis.gov/emma)

Address Changes: If you move, please visit [www.uscis.gov/addresschange](http://www.uscis.gov/addresschange) for information on how to update your address. Remember to update your address for all your receipt numbers.

If you try our online tools and still need help, you can call the USCIS Contact Center at 800-375-5283 or 800-767-1833 (TDD for the hearing impaired).